friendly visits but that, knowing that the defendant was involved in this litigation, he deemed it prudent to make a note of these visits in his desk diary. This was confirmed by the diary and these visits were unchallenged. A futile effort was made later during the defence to show that the defendant visited Lim at the latter's request though this was never put to Lim earlier. No one said a word about the actual discussions at these visits and I am not prepared to conclude that these were other than cordial visits. The plaintiffs led this evidence of visits with a view to showing that Lim and the defendant were still on friendly terms notwithstanding this litigation which was instituted at the instance of Lim's insurers who have already paid Lim. The defendant did not succeed in rebutting this evidence in any way.

Finding the facts as I do, I now turn to the law. All the necessary ingredients for the creation of a bailment of the car were proved to be present *i.e.* first, a delivery of possession of the car to the defendant at his kiosk for the purpose of washing and cleaning it on 3rd December 1971. This involved a temporary transfer of its custody on the clear understanding that the car should be returned to the bailor, Lim, at about 5 p.m. that day after the specific work thereon undertaken by the defendant had been completed.

This car was not merely parked there at the risk of Lim Tuan Meng who left it there. It was left there with its keys to enable cleaning to be effected for which he paid $12 per month in addition to providing the kiosk with his custom as purchaser of petrol and in addition to using the kiosk for greasing and servicing his car. I hold that there was a bailment for reward and not a mere right or licence to park simpliciter or a purely gratuitous bailment. *Ashby* v. *Tolhurst*[1] can be distinguished on its facts because, in that case, a mere licence to park was conferred at a fee and liability for damage was negated by conditions on the parking ticket itself.

Nor was this, for obvious reasons, only a gratuitous bailment. Even if the fee for washing cars was only $12 p.m. the bailor brought business to the defendant in other respects. It was held that a landlord of a block of service flats who accepted a trunk for storage without charge from a tenant's wife was *not* a gratuitous bailee merely but subject to the same rules as a bailee for reward, *Andrews* v. *Home Flats Ltd.*[2] I find that it suited the defendant's business purposes and prospects to accord more facilities to regular customers like Lim than he otherwise need have done and that he did undertake for 18 months at least the responsibilities of looking after the car whilst left in the custody of the kiosk and to return it when required after, as in this case, washing and cleaning it. He did not employ a ticket system as in *Ashby's* case in order to make it quite clear to customers that he was not accepting responsibility for the safety of cars left in his kiosk's premises and in order to make it clear that, if so left, they were entirely at the customer's own risk. I find that it was the shock precipitated by the loss of this car on 3rd December, 1971 which caused him to exhibit the notices shown in the photographs AB5. I am satisfied that he did not do so earlier because he never thought of it until then.

The onus of disproving negligence is on the bailee once a bailment has been shown to exist. The defendant did not discharge that onus.

A bailee is required to take that degree of care which may reasonably be looked for, having regard to all the circumstances. In the circumstances of this case he is liable at least for ordinary negligence since the bailment was for the benefit of both parties.

In my judgment, the defendant failed to take all reasonable precautions to protect the car from theft; that if, as in this case, he entrusted that duty to his servant or agent, he is answerable for that servant's carelessness in carrying out that duty. If he had taken the elementary precaution of ensuring the safe-keeping of the keys of the car, after it had been cleaned and locked, by adopting the same procedure as he says he did in the case of cars sent there for greasing and servicing, this loss could have been prevented. Even Hussein said that he saw the car in the place where it had been left (the "wash area") at about 3 p.m. Thereafter he was elsewhere in the premises under some trees whilst this car was out of his sight. He had been alert enough to see some friends of Lim take this car away on previous occasions and he did not stop them. If he had exercised the same vigilance on this occasion he should have been able to see that some unauthorised stranger was tampering with the car and/or removing it, particularly if, as he says he did in fact lock it.

Judgment will accordingly be entered for the plaintiffs in the agreed sum of $9,500 with costs.

Judgment for the plaintiffs.

Solicitors: *Battenberg & Talma; Guok & Ganesan.*

WEE KANG WHYE & ANOR. v. LEE WOON TONG

[O.C.J. (Choor Singh J.) September 21, 1973]
[Singapore — Suit No. 2044 of 1971]

Land Laws — Defendant allowed to occupy and build hut on land by the plaintiffs — Condition that defendant was to vacate the place without compensation when requested to do so — Plaintiffs claiming possession — Whether defendant entitled to remain on land — Whether defendant was a licensee coupled with an interest — Estoppel — Equitable relief.

In this case the facts were that the defendant was permitted to occupy the plaintiff's land and to build a temporary structure on it on condition that he had to vacate the place without any compensation when requested to do so. The plaintiffs agreed to sell the property with vacant possession and offered the defendant $5,000 as compensation for him to move out. The defendant apparently agreed to accept the $5,000 and to vacate the hut but subsequently he changed his mind and refused to move out. The plaintiffs thereupon brought an action for possession.

Held: (1) the plaintiffs in this case had granted the defendant a temporary gratuitous licence which they were entitled to revoke at will. The defendant acquired no rights at all, neither in law nor in equity;

(2) the plaintiffs were therefore entitled to an order of possession against the defendant.

Cases referred to:-

(1) *Winter Garden Theatre Ltd.* v. *Millennium Productions Ltd.* [1948] A.C. 173.

(2) *Ramsden* v. *Dyson* (1866) L.R. 1 H.L. 129.
(3) *Plimmer* v. *Wellington Corporation* (1884) 9 App. Cas. 699.
(4) *Inwards & Baker* [1965] 1 All E.R. 446.
(5) *Khew Ah Bah* v. *Hong Ah Nye* [1971] 2 M.L.J. 86.
(6) *Canadian Pacific Railway Co.* v. *The King* [1931] A.C. 414 at p. 429.
(7) *Ooi Ai Seng* v. *Chan Lin Lam* [1973] 2 M.L.J. 20.
(8) *Siew Soon Wah & Ors.* v. *Yong Thong Hong* [1973] 1 M.L.J. 133.
(9) *Devi* v. *Francis* [1969] 2 M.L.J. 169.
(10) *In re King's Leasehold Estates* (1873) L.R. 16 Eq. 521.
(11) *Kusel* v. *Watson* (1879) 11 Ch. D. 229.

CIVIL SUIT.

Kirpal Singh for the plaintiffs.

Tan Thian Chua for the defendant.

Choor Singh J.: In this action the plaintiffs claimed possession of a portion of Lot 80 Pt. 47 Mukim III which is occupied by the defendant.

The facts are these. The property demarcated in the Government Resurvey Plan as Lot 80 Pt. 47 of Mukim III in the District of Pasir Panjang is a fairly large piece of land having an area of 34,990 sq.ft. It has frontage on Pasir Panjang Road. It was purchased in 1927 by the two plaintiffs and their brother Wee Kang Seng. It had in 1927 two large houses on it which bear Nos. 338 and 336A Pasir Panjang Road. It would appear that the property was in fact purchased by the father of these three brothers Wee Kang Whye, Wee Kang Guan and Wee Kang Seng and registered by him in the names of his three aforesaid sons. When this property was purchased by their father in 1927 the defendant was employed by their father as a clerk in his firm.

Wee Kang Seng was adjudged a bankrupt some time in 1963 and his one-third share in this property was purchased by Wee Kang Whye from the Official Assignee. At the date of the trial of this action Wee Kang Whye and his brother Wee Kang Guan, the plaintiffs in this action, were the legal owners of the property.

According to the plaintiffs the defendant is related to them and is a distant uncle. During the Japanese occupation of Singapore the defendant was in Hong Kong. He returned to Singapore with his family in 1946. He had difficulty in finding suitable accommodation and he made a request to Wee Kang Seng to be allowed to put up a small temporary structure on this property in Pasir Panjang. Wee Kang Seng consulted his brother Wee Kang Whye the first plaintiff. Wee Kang Whye did not like the idea but since the defendant was their uncle and had worked for their father and had no place to live, he agreed to the defendant building a temporary structure on the site of the old garage of house No. 338 on condition that whenever requested to do so the defendant should move out without any compensation. According to Wee Kang Seng who gave evidence for the plaintiffs and Wee Kang Whye the first plaintiff the defendant agreed to this condition and was allowed to put up a temporary structure of planks with an asbestos roof which cost between two and three thousand dollars. The structure was 20 feet wide and 60 feet long and had an area of 1,200 sq.ft. Later, without the permission and authority of the plaintiffs the defendant put up two or three other small structures and planted a few fruit trees on the vacant land in front of his temporary structure.

In 1971 the plaintiffs decided to sell the property. Before they signed the sale contract Wee Kang Whye spoke to the defendant and informed him that they were selling the land with vacant possession and that they were prepared to pay him $5,000 compensation if he would move out. The defendant agreed to accept $5,000 and vacate the temporary structure which he was occupying. After the plaintiffs had signed the sale contract the defendant backed out of this agreement. He refused to accept the compensation offered and refused to move out. The plaintiffs were obliged to commence this action.

The defendant in his defence denied any knowledge that the plaintiffs were the owners of the land in question. He denied that he was in any manner related to the plaintiffs or that he had with their leave and licence occupied any portion of the land. He claimed that he went on the land without anybody's permission. He counterclaimed not only the area of 1,200 sq.ft. occupied by his unnumbered temporary structure but an area of 11,049 sq.ft. which included the site of house No. 338. And he counterclaimed: —

"(a) a declaration that the defendant is entitled in fee simple absolute to the said land and premises known as No. 338 Pasir Panjang Road, Singapore and the outhouses and that strip of land containing a total area of 11,049 sq. ft. and delineated red on the plan annexed being part of Lot 80 Pt. 47 Mk. III, Singapore.

(b) an injunction to restrain the plaintiffs, their servants or agents from trespassing on the land and premises."

The defendant also claimed damages and costs.

There were two issues of fact for determination in this case. First, what were the circumstances under which the defendant entered on the plaintiffs' land. Secondly, did the defendant agree to move out in consideration of a sum of $5,000 being paid to him as compensation?

As regards the first issue the defendant admitted under cross-examination that he came on the plaintiffs' land with the permission of the plaintiffs. He also admitted that he built his unnumbered temporary structure with the permission and authority of the plaintiffs. He admitted further that he has never paid any ground rent or licence fee to the plaintiffs and that he has been allowed to live on the plaintiffs' land free of any charge. He admitted that when the land was purchased by the plaintiffs' father he was working in their father's firm. He admitted that he knew that the land belonged to the plaintiffs. He also admitted that he was a distant uncle of the plaintiffs. What he did not admit was that he was given permission to build his temporary structure on condition that he would have to move out when requested to do so without any compensation. He maintained that there was no such condition. When asked as to what was agreed when he was granted permission to build his temporary structure he stated that nothing was agreed.

The plaintiffs' case that the defendant was permitted to construct his unnumbered temporary struc-

ture on condition that he had to vacate the place without any compensation when requested to do so was supported by the evidence of Wee Kang Whye and Wee Kang Seng. In my opinion they were speaking the truth. Furthermore the probabilities of the matter were entirely in their favour. Having regard to the fact that the defendant was their uncle who had worked for their father and who had difficulty in finding accommodation, they took pity on him and granted him temporary relief by allowing him to put up a cheap temporary structure without his having to pay any ground rent or licence fee. Their intention quite clearly was to accommodate him temporarily and for that reason they laid down the condition that he had to move out without any compensation when requested to do so. I was satisfied that when they gave him permission to construct his unnumbered temporary structure, there was no intention on their part that he should live there permanently for the rest of his life without paying any ground rent and no such inducement or expectation was held out to him. There was no reason at all why they should encumber their property with a squatter who paid them nothing. I rejected the defendant's contention that no condition was laid down. I did so because in my opinion he was not speaking the truth. Furthermore the probabilities of the matter were entirely against him. On the evidence before me I held that it was a condition of the granting of permission to build a temporary structure, that the defendant had to move out without any compensation when requested to do so and that the defendant was bound by that condition.

As regards the second issue, here again in my opinion the first plaintiff Wee Kang Whye was speaking the truth when he stated that the defendant had agreed to vacate the property in consideration of $5,000 being paid to him as compensation. His evidence is supported by the correspondence that passed between the parties. The defendant's contention that $10,000 was offered to him is not corroborated by any other evidence. I accepted Wee Kang Whye's evidence on this issue because in my opinion what he stated was the truth of the matter, namely, that the defendant had agreed to move out and accept $5,000 as compensation.

Now, what is the law applicable to the facts as found by me? First of all the defendant's counterclaim of long adverse possession of an area of 11,049 square feet was entirely groundless. As this counterclaim was abandoned at the trial, I will say no more about it save that it was dismissed with costs.

The arrangement under which the defendant was permitted to construct his temporary structure on the plaintiffs' land amounted in law to a gratituous licence. Such a bare licence without any constructual term in favour of the licence can be revoked at the will of the licensor. See *Winter Garden Theatre Ltd.* v. *Millennium Productions Ltd.*[1] Under the circumstances of this case the defendant had no legal right to remain on the plaintiffs' land after he was requested to move out. The plaintiffs not only gave him reasonable notice that he had to move out when their sale of the land was completed but also offered him compensation in the sum of $5,000 for moving out. In my judgment the defendant became a trespasser when he refused to move out after due notice.

Counsel for the defendant submitted that the defendant by virtue of the expenditure incurred by him in constructing the temporary structure, had an equitable right to remain on the land as long as he wished and that the plaintiffs were therefore not entitled to vacant possession of the area occupied by the defendant. Counsel cited *Ramsden* v. *Dyson;*[2] *Plimmer* v. *Wellington Corporation;*[3] and *Inwards & Baker,*[4] in support of his submission. In my judgment, counsel had misapprehended the *ratio decidendi* of the cases cited by him. In *Khew Ah Bah* v. *Hong Ah Mye,*[5] I had occasion to consider all these authorities concerning equitable estoppel and this is what I stated in that case, at page 88: —

"... It is quite plain from these authorities that, if the owner of land requires another, or indeed, allows another to expend money on the land under an expectation created or encouraged by the landlord that he will be able to remain there, that raises an equity in the licensee such as to enable him to stay there. And the case of a tenant who is paying ground rent for the use of the land on which he has been allowed to erect a dwelling house is even stronger. He has a tenancy coupled with an equity. In such a case the landlord cannot recover possession of his land by merely terminating the tenancy; he must also satisfy the equity. In *Plimmer's* case the Privy Council opined that the court must look at the circumstances in each case to decide in what way the equity can be satisfied. In the recent case of *Inwards* v. *Baker,* Lord Denning M.R. explained the doctrine as follows:- 'It is an equity well recognised in law. It arises from the expenditure of money by a person in actual occupation of land when he is led to believe that, as the result of that expenditure, he will be allowed to remain there. It is for the court to say in which way the equity can be satisfied.' "

In my opinion counsel for the defendant failed to appreciate that the doctrine of equitable estoppel applies only when the tenant has been led to expend money on the land under an expectation created or encouraged by the landlord that the tenant will as a result of that expenditure be able to remain there. For equity to intervene there must be evidence of some inducement or encouragement by the landlord or some expectation held out by him to the tenant on the strength of which the tenant expended money on the land. As explained by Lord Russel of Millowen in *Canadian Pacific Railway Co.* v. *The King,*[6]

"the foundation upon which reposes the right of equity to intervene is either contract or the existence of some fact which the legal owner is estopped from denying."

Upon the facts of the present case I could find no foundation for the application of any equitable doctrine in favour of the defendant. There was no conduct on the part of the plaintiffs which induced the defendant to build in the belief that rights in perpetuity would be acquired. There was nothing upon which to ground any estoppel. The facts were all the other way. It was the defendant who begged the plaintiffs to allow him to construct a temporary structure on their land. And before permitting him to do so they made it quite clear to him that he would have to vacate without compensation when requested to do. He accepted this condition and proceeded to build his temporary structure. No expectation was created by the plaintiffs, by word or by conduct, in the mind of the defendant that he would be allowed to stay on their land for any definite or indefinite period. Even on the defendant's

own evidence, "nothing was agreed". Under the circumstances there was nothing which entitled the defendant to claim relief in equity.

Whether equity will intervene to protect a tenant depends entirely on the facts of the case. This is clearly illustrated in a recent decision of the Federal Court of Malaysia. In *Ooi Ai Seng* v. *Chan Lin Lam*,[7] there was a written tenancy agreement between the parties. The plaintiff rented out a portion of his land in 1958 for the tenant to construct a wooden shed and the tenant was to pay ground rent of $6 per mensem. The tenant died in 1965 and his son the defendant took over the tenancy and was recognised by the plaintiff as the new tenant. In 1966 the plaintiff wishing to have the rented portion of the land in question for his own purpose requested the defendant to vacate the land within a month. The defendant failed to do so and the plaintiff instituted proceedings for the recovery of vacant possession of the land in question. The defendant contended that the tenancy granted to him had by being coupled with an interest in the land, became irrecoverable. The dispute eventually reached the Federal Court where *Ramsden* v. *Dyson*;[2] *Plimmer* v. *Mayor Councillors and Citizens of the City of Wellington*;[3] *Inwards* v. *Baker*;[4] *Khew Ah Bah* v. *Hong Ah Mye*;[5] *Siew Soon Wah & ors.* v. *Yong Thong Hong*;[8] *Devi* v. *Francis*;[9] *In re King's Lease-hold Estates*;[10] and *Kusel* v. *Watson*,[11] were all cited and considered. Azmi L.P. after reviewing the facts and the cases cited, observed at page 22: —

"... In the instant case, it was provided in the contract that the tenant could only construct a wooden shed on the land and the shed they had in mind and subsequently built on the land was built of corrugated iron roof, wooden posts and wire mesh walls. If there was anything at all suggesting the duration of the tenancy, the very nature of the construction would indicate a tenancy of a temporary nature, and I am therefore unable to agree with the learned judge's conclusion that there had arisen in the tenant's favour an equity of equitable estoppel protecting his occupation of the land...."

In the present case, as stated earlier, there was no doubt at all that the plaintiffs had granted the defendant a temporary gratuitous licence which they were entitled to revoke at will. The defendant acquired no rights at all, neither in law nor in equity.

When a defendant seeks relief in equity, his conduct becomes very relevant. In this case, there was no doubt at all that the defendant had come to court with unclean hands. He had abused the kindness shown to him by the plaintiffs by counterclaiming legal ownership of a large area of their land by falsely alleging adverse possession. Secondly, knowing that the plaintiffs were bound by contract to convey the land with vacant possession by a certain date, the defendant sought to extort from the plaintiffs a sum of money greater than what he had agreed to receive as compensation for moving out. On the other hand the plaintiffs were still sympathetic towards him and at the trial they renewed their offer of $5,000 compensation for his vacating their land. They were also prepared to allow him to dismantle his structure and take away the materials.

In my judgment, on the facts of this case, the defendant was not entitled to any relief either in law or in equity. As the plaintiffs had revoked the gratuitous licence under which the defendant was allowed to occupy a portion of their land, they were entitled to vacant possession of the said land. Accordingly the defendant was ordered to deliver vacant possession on or before 30th September 1973. As the plaintiffs had renewed at the trial their offer of $5,000 as compensation, they were ordered to pay this sum to the defendant upon his delivery of vacant possession of the area occupied by him. The defendant was ordered to pay the plaintiffs' costs as taxed. The defendant's counterclaim was dismissed with costs.

Claim allowed.

Solicitors: *Mallal & Namazie; Tan Thian Chua & Co.*

EASTERN SUPPLY CO. v. KERR

[C.A. (Wee Chong Jin C.J., Chua & Kulasekeram JJ.) October 4, 1973]

[Singapore — Civil Appeal No. 61 of 1972]

Contract — Sale of goods — Breach of implied conditions — Acceptance of goods by buyer — Sale of Goods Act, 1893, ss. 14 and 35.

Practice and Procedure — Appeal — Whether appellate court justified in interfering with findings of fact by trial judge.

In this case the respondent had bought a second-hand car from the appellants. The car was tested by the respondent's wife before the respondent agreed to buy it. The respondent gave the appellants a post-dated cheque in full payment. Subsequently the car was found to be defective and the appellants were informed. The respondent stopped payment on his cheque. The appellants eventually sued for the price of the car. The respondent pleaded the car was not in a roadworthy condition in breach of an express or implied term of the sale. The learned district judge who tried the case gave judgment for the appellants, on the ground that the respondent had on the evidence failed to discharge the burden that lay on him. On appeal to the High Court this judgment was reversed. It was held that there was ample evidence to show that the car was not roadworthy and that the respondent had rejected the goods within a reasonable time.

Held: (1) the appellate court erred in disturbing the conclusion of the trial judge that the respondent had failed to prove that the car was unroadworthy. There was ample evidence for the finding of the trial judge and the appellate judge ought not to have disturbed his findings.

(2) even on the assumption that the appellants were in breach of the implied conditions under section 14(1) and (2) of the Sale of Goods Act, 1893, the respondent had not rejected the car within a reasonable time and must therefore be deemed to have accepted the car.

Cases referred to:-

(1) *Bartlett* v. *Sidney Marcus Ltd.* [1965] 1 W.L.R. 1013 at p. 1017.

(2) *Leaf* v. *International Galleries* [1950] 1 All E.R. 693.

(3) *Long* v. *Lloyd* [1958] 2 All E.R. 402.

COURT OF APPEAL.

S. Michael Hwang for the appellants.

K. E. Hilborne for the respondent.

Wee Chong Jin C.J. (delivering judgment of the Court): The appellants are dealers in second-hand cars. The respondent, Mr. Kerr, is an R.A.F. officer stationed in Singapore. He does not drive but his wife does,